contrary, the price of goods sold is not payable until delivery, it must appear from the complaint that delivery has been made. At common law the counts for goods sold and delivered or goods bargained and sold would have answered the purpose. But the pleader here used only the term *sold*. It was conceded that his count was bad unless sold included the idea of delivery. At common law it did not. 1 CHITTY, PLEADING, *340 (11th Am. Ed.). The California court was willing, however, to strain a point to sustain the pleading, and held that the term sold was equivalent to sold and delivered.

Whether this ruling was correct is perhaps questionable. In *Kirkpatrick-Koch Dry Goods Co.* v. *Box*, 13 Utah 494, a precisely similar point was raised upon an almost identical pleading, and the court held that the term sold did not include the notion of a delivery, and that the complaint failed for that reason to state a cause of action.

In a case of this kind the pleader's task is hardly more than clerical at common law, but under the code, if its directions are followed, it becomes a matter requiring some skill and care. In other words, the code has not made it easier, but has made it harder, to draw a good pleading on a quasi-contract. Of course the defendant, in either the California or the Utah case, could hardly have been misled by the language used. He doubtless understood perfectly the nature of the claim made against him. The established theory of pleading was the only sufferer, for under this theory the test of a good complaint is the sufficiency of the facts stated to constitute a cause of action, and not their sufficiency to inform the defendant of the nature of the plaintiff's case. Whether it would be better to change this theory and establish in its stead a system based upon the idea of notice, is another question, which has been discussed with some care by Professor Whittier in a recent number of the Illinois Law Review. It is perhaps safe to say that such a change would destroy the occasion for raising three-fourths of the questions on pleading which are now so frequent under the code system. E. R. S.

APPLICABILITY OF ORDINANCES TO THE DISTRIBUTION OF LIQUORS BY SOCIAL CLUBS.—The sale of liquors by a social club presents a question of interest not only to the legal profession, because of the varying views taken by the different courts, but also to the laymen who are interested as members of such social clubs, which may be found in almost every town and city throughout the country. The socialistic tendency of the present day finds its expression in this as in nearly all other matters, and "the principle of law that prohibits a laboring man from buying a drink of liquor in a saloon ought to prevent the wealthy gentlemen from organizing themselves into a corporation for the purpose of selling it to their members" accords with the views of the general public regarding fair play and equality before the law. The rule that revenue laws require a liberal construction in their favor to prevent evasions, has definitely settled the matter in the federal courts, which are uniform in holding that such clubs must procure a license. *United States* v. *Wittig*, Fed. Cas. No. 16, 748; *United States* v. *Giller* (C. C.), 54 Fed. 656; *United States* v. *Alexis Club* (D. C.), 98 Fed. 725. The question is also free from doubt when the laws are prohibitory in character, as prohibition statutes have

never been construed as exempting social clubs from their operation. *Barden* v. *Montana Club,* 24 Am. St. Rep. 27, Note p. 35.

Several recent cases have again brought the matter to the attention of the courts. In *Manning et al.* v. *Canon City* (1909), — Colo. —, 101 Pac. 978, the defendants, constituting the board of control of the Elks' Club of Canon City, were convicted of violating a city ordinance providing that "whosoever by himself or another either as principal, clerk, agent or servant, shall sell or dispose of intoxicating liquors * * *" shall be fined. The club dispensed liquors as a mere incident in carrying out its social purposes. The court in holding such a transaction a sale within the provisions of the ordinance, cites *State* v. *The Easton Social Club,* 73 Md. 97, 20 Atl. 783, 10 L. R. A. 64, which quotes with approval from *South Shore Club* v. *People,* 228 Ill. 75, 81 N. E. 805, 12 L. R. A. (N. S.) 519, 119 Am. St. Rep. 417, "that there is no occasion to be astute and to indulge in questionable refinements in order to relieve these corporations of the just consequences of their acts." The principles here involved were reaffirmed in *Lloyd et al.* v. *Canon City* (1909), — Colo. —, 103 Pac. 288. A few months later the Supreme Court of Washington reached the same conclusion in the *City of Spokane* v. *Baughman* (1909), — Wash. —, 103 Pac. 14. The facts of that case were very similar to the preceding cases. The defendant, steward of the Spokane Club, was convicted of violating an ordinance providing in effect that a license should be procured by anyone desiring to keep a drinking shop, barroom or saloon, at which liquors might be sold. The ordinance was passed in 1886, the club was organized in 1890, and incorporated in 1899. No attempt was made prior to the suit to enforce the ordinance against the club. The decision in this, as in the Colorado cases, turned upon whether such transactions should be considered sales, and in holding them such, the court applied Blackstone's definition that "a sale is a transmutation of property from one man to another, in consideration of some price or recompense in value." The fact that sales could only be made to club members did not change the nature, but simply limited the number, of transactions. These decisions find support in: *People* v. *Soule,* 74 Mich. 250, 41 N. W. 908, 2 L. R. A. 494; *State* v. *Horacek,* 41 Kan. 87, 21 Pac. 204, 3 L. R. A. 687; *State* v. *Neis,* 108 N. C. 787, 13 S. E. 225, 12 L. R. A. 412; *Newark* v. *Essex Club,* 53 N. J. L. 99, 20 Atl. 769; *Kentucky Club* v. *Louisville,* 92 Ky. 309, 17 S. W. 743; *Nogales Club* v. *State,* 69 Miss. 218, 10 South. 574; *Marmont* v. *State,* 48 Ind. 21; *Mohrman* v. *State,* 105 Ga. 709, 32 S. E. 143, 43 L. R. A. 398, 70 Am. St. Rep. 74; *State* v. *Shumate,* 44 W. Va. 490, 29 S. E. 1001; *State* v. *Boston & Pickwick Club,* 45 La. Ann. 585, 12 South. 895, 20 L. R. A. 185. But a contrary holding would have been equally well supported. In *Cuzner* v. *California Club* (1909), — Cal. —, 100 Pac. 868, decided several months prior to the cases under discussion, the court holds that such a club is not doing a "business of selling liquors"; but in a separate opinion Chief Justice BEATTY states that he would have serious doubts as to this conclusion, were it not that after the re-enactment of an existing ordinance no attempt had been made to collect a license, thus supporting a construction put upon the ordinance that the club did not come within its terms. But an even longer lapse of time received no consideration as affecting the

construction in *City of Spokane* v. *Baughman,* supra. For facts and discussion of *Cuzner* v. *California Club,* see 7 MICH. L. REV. 698. In support of the California case may be cited: *Klein* v. *Livingston Club,* 177 Pa. 224, 35 Atl. 606, 34 L. R. A. 94, 55 Am. St. Rep. 717; *People* v. *Adelphi Club,* 149 N. Y. 5, 43 N. E. 410, 31 L. R. A. 510, 52 Am. St. Rep. 700; *Commonwealth* v. *Smith,* 102 Mass. 144; *State* v. *St. Louis Club,* 125 Mo. 308, 28 S. W. 604, 26 L. R. A. 573; *Manassas Club* v. *City of Mobile,* 121 Ala. 561, 25 South. 628; *State* v. *Austin Club,* 89 Tex. 20, 33 S. W. 113, 30 L. R. A. 500; *Tennessee Club* v. *Dwyer,* 11 Lea (Tenn.) 452, 47 Am. Rep. 298; *Piedmont Club* v. *Com.,* 87 Va. 540, 12 S. E. 963; *State ex rel. Columbia Club* v. *McMaster,* 35 S. C. 1, 14 S. E. 290, 28 Am. St. Rep. 826; *Barden* v. *Montana Club,* 10 Mont. 330, 25 Pac. 1042, 11 L. R. A. 593, 24 Am. St. Rep. 27.

Since the determination of these cases necessarily turns upon the construction given to ordinances not uniform in their terms the decisions in many cases cannot be said to be in direct conflict, but often the difference is so slight as to justify such a view. The most obvious course which should be taken to prevent the question from arising would be to include or to exclude such organizations from the operation of the ordinance by express terms.

F. H. S.

CAPIAS IN EXECUTION WITHOUT PRIOR ORDER OR ARREST.—A practice question of some interest and frequent occurrence, which recently received careful consideration in the supreme court of New Jersey, is whether execution against the body without special order of the court granting it nor mention of it in the judgment, is valid if the action was not commenced by *capias* and there was no order of arrest during the action before judgment.

The cautious lawyer would of course get the order in advance rather than take any chances of liability for false imprisonment; but even lawyers are not always thoughtful and cautious, or our courts would have less business, and the paragraph writer would lose this opportunity.

On principle it would seem that the only advantage of or reason for prior order would be to get adjudication of the right in the particular case, to avoid risk of taking it in an unwarranted case. For the execution is the end and aim of the law and the only purpose in suing at all; wherefore, the execution follows as a matter of course from the fact of judgment; and there need be no mention of it in the judgment, other than the statement that it is considered and adjudged that the plaintiff do recover, &c., whereupon execution appropriate to the judgment given will issue as a matter of course. A judgment without right to execution would be a vain thing; and if no particular execution is mentioned, why should it not be a *capias* as well as any other process? The only rule is that the execution must follow and be appropriate to the judgment to be executed.

Historically considered, *capias* being a common law process, the right to have it issue would seem to exist unless there is a special order in the judgment against it or some statutory restraint. For when a right is shown to exist at common law it would be presumed to continue in the absence of anything to indicate the contrary. At the common law the rule was that the